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RECEIVED

OCT 31 2005

October 31, 2005

PSC SC
DOCKETING DEPT.

VIA HAND DELIVERY

The Honorable Charles L.A. Terreni
Chief Clerk
South Carolina Public Service Commission
PO Drawer 11649
Columbia SC 29211

10/31/05
too

RECEIVED
2005 OCT 31 PM 1:00
SC PUBLIC SERVICE
COMMISSION

RE: Application of Total Environmental Solutions, Inc. for Approval
of Contract and for Expedited Review
Docket No. 2005-352-W~~5~~, Our File No. 557-10033

Dear Charles:

Enclosed for filing please find the original and ten (10) ten copies of the **Petition of Total Environmental Solutions, Inc. for Approval of Contract and for Expedited Review** for filing with the Commission.

Please stamp "received" the additional copy of this letter, and return with the bearer of these documents.

With kind regards, I am

Yours truly,



John F. Beach

cc: Office of Regulatory Staff
Mr. Paul Maeder (w/o attachment)
Mr. Bill Schoening (w/o attachment)

Attachments

STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 2005 352W

RECEIVED
2005 MAY 21 PM 3:00
SOUTH CAROLINA
PUBLIC SERVICE COMMISSION

IN THE MATTER OF:)
)
Total Environmental Solutions, Inc.)
Petition for Approval of)
Bulk Water Contract)
With the City of Westminster, SC)
and for Expedited Review)
_____)

**PETITION OF TOTAL
ENVIRONMENTAL SOLUTIONS, INC.
FOR APPROVAL OF CONTRACT
AND FOR EXPEDITED REVIEW**

Total Environmental Solutions, Inc. ("TESI"), respectfully petitions the South Carolina Public Service Commission (the "Commission"), an order approving a Water Supply Agreement with the City of Westminster, South Carolina ("Contract"), pursuant to S.C. Reg. 103-743. TESI supports its petition as follows:

1. TESI is informed and believes that, from at least as early as the 1980s, water utilities serving the Foxwood Hills Subdivision have purchased water in bulk from either the Westminster Commission of Public Works, or the City of Westminster, (collectively, "Westminster"). This arrangement was in place in December 2000, when TESI purchased the Foxwood Hills water and sewer system through the U.S. Bankruptcy Court.
2. TESI is informed that, prior to execution of the Contract attached hereto, Westminster has always provided this bulk water to the Foxwood Hills operation without a written contract. Instead, Westminster set all terms of service through ordinance or other official public action. The relevant terms and conditions were consistent for all similarly situated Westminster customers.
3. Over the past several months TESI has sought and obtained a Water Supply Agreement

with the City of Westminster, attached hereto as **Exhibit 1**. TESI did this in part because the South Carolina Department of Health and Environmental Control (“DHEC”) requested TESI to do so, and in part to provide TESI and its customers with the certainty associated with such a contractual agreement.

4. The Contract contains certain terms and provisions that TESI believes will benefit its customers, adding stability to TESI’s operations. However, the Contract rate schedule was not subject to negotiation between TESI and the City of Westminster. Rather, rates were set, and will continue to be set, by duly-adopted City ordinance. Westminster has informed TESI that these rates are consistent with all Westminster bulk water customers and are thus not negotiable. TESI is informed and believes that the South Carolina General Assembly has not empowered the Commission to exercise jurisdiction over the rates Westminster or any other public entity might charge to a regulated public utility for bulk water.

5. S.C. Reg. 103-743 “Contracts” states as follows:

No utility shall execute or enter into any agreement of contract with any person, firm, partnership or corporation or any agency of the Federal, state, or local government which would impact, pertain to, or affect said utilities’ fitness, willingness, or ability to provide water service, including, but not limited to the treatment of said water without first submitting said contract informed to the Commission and obtaining approval to the Commission.

6. TESI is informed and believes that the Contract is in the public interest, since it establishes an additional degree of certainty in Westminster’s provision of bulk water to TESI which, in turn, adds further stability to TESI’s provision of water service to its customers. TESI is, therefore, informed and believes that it is entitled to an order approving the Contract, pursuant to S.C. Reg., 103-743.

7. For these reasons, TESI requests that the Commission issue its order approving the

attached contract.

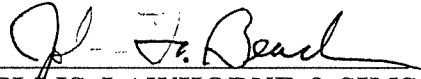
8. Since the rates in the Contract are neither subject to negotiation, nor to this Commission's jurisdiction, and since the Contract largely formalizes an arrangement that has already been in place and observed by the parties, TESI is informed and believes that a public hearing on this matter is unnecessary, and hereby waives any rights it might otherwise have thereto.

Consequently, TESI requests that the Commission address this Petition on an expedited basis, without holding a public hearing.

THEREFORE, TESI respectfully requests that the Commission:

- a. Issue its order approving the attached contract, pursuant to S.C. Reg. 103-743, or otherwise.
- b. Address this matter on an expedited basis.
- c. Grant such other and further relief as the Commission deems just and proper.

Respectfully submitted,


ELLIS, LAWHORNE & SIMS, P.A.
John F. Beach
1501 Main Street, 5th Floor
Post Office Box 2285
Columbia, SC 29202
Telephone: 803/343-1269

Counsel for
Total Environmental Solutions, Inc.

Columbia, South Carolina
October 31, 2005

WATER SUPPLY AGREEMENT
TOTAL ENVIRONMENTAL SOLUTIONS, INC.
AND
CITY OF WESTMINSTER, SOUTH CAROLINA
FOXWOOD HILLS WATER SYSTEM

THIS AGREEMENT, made and entered into on this 22nd day of August, 2005, by and between Total Environmental Solutions Inc. a Louisiana Corporation (hereinafter "Utility"), and the City of Westminster ("City"), a municipality and body politic located in Oconee County South Carolina (Utility and City collectively referred to as the "Parties").

WITNESSETH

WHEREAS, Utility is the exclusive provider of water service to the public in its Service Area located in Oconee County, South Carolina, known generally as "Foxwood Hills" (hereinafter referred to as the "Utility Service Area"), and more fully described in **Exhibit 1**; and

WHEREAS, the Parties acknowledge Utility's continuing and exclusive right to serve the Utility Service Area; and

WHEREAS, City is now providing the bulk water to Utility for Utility's existing customers within the Utility Service Area; and

WHEREAS the Parties desire to enter into a new bulk water supply agreement incorporating the terms of that service (hereinafter referred to as the "Agreement").

NOW, THEREFORE, in consideration of the above acknowledgments and recitals which shall be deemed an integral part of this Agreement and of the mutual covenants as hereinafter set forth, the Parties hereto agree as follows:

Section 1

Purpose

1. This Agreement creates a contract through which the Parties agree that shall sell and Utility shall purchase all potable water from City's water system necessary for the Utility to provide water service to its present and future customers within the current and any future expanded Utility Service Area. All terms and conditions contained herein shall be read and interpreted in a manner consistent with and in furtherance of this purpose and intent and consistent with the laws of South Carolina governing contracts by a municipality.

Section 2

Supply Service

2. City shall provide water to Utility through City's water mains that interconnect to the Utility's water distribution system at the existing interconnection location (the "Interconnection Point"). City maintains a six-inch Master Meter at the Interconnection Point. The Master Meter on City's side of the Interconnection Point is or shall become the property of City. City will maintain the accuracy and function of all such Master Meters at its sole expense. Neither Party shall make any changes to the Interconnection Point without the prior approval of the other Party. Any such changes shall meet all applicable code requirements and regulatory standards.

3. City shall use its best efforts to provide the necessary water supply capacity and pressure needed by Utility to service Utility's current and future customers within and outside of the Utility Service Area. This will include adequate pressure of at least 120 psi at the

Interconnection Point. Utility presently provides service only to Customers within the Utility Service Area described in **Exhibit 1**. If Utility either expands the current Utility Service Area, or establishes relationship(s) with customers outside of the Utility Service Area (collectively the “Expanded Area”), the Parties agree to amend this Agreement to reflect such expansion. City shall provide Utility with Service necessary for Utility to serve the proposed Expanded Area as long as 1) City has adequate capacity to service such expansion, and 2) at the time of the proposed expansion City is not providing service directly to retail end-users within the proposed Expanded Area.

4. City will provide water at the Interconnection Point equal to or exceeding all applicable state and/or federal drinking water standards and regulations. City is not responsible for any degradation in the quality of the water after it passes the Interconnection Point and enters the Utility’s system. The Utility will not use alternative water sources as long as City meets the Utility’s water demands. Should City fail to provide the Utility with adequate potable water with adequate pressure to meet the needs of Utility’s customers, the Utility shall have the right to obtain alternative sources of water or, at Utility’s sole option, terminate this Agreement.

5. City shall read its Master Meter at periodic intervals of approximately thirty (30) days to determine the amount of water provided by City to Utility. The volume of water measured through the Master Meter shall be used to calculate monthly service charges. Utility shall pay City these monthly service charges on or before the due date indicated on the monthly bill. Such due date shall, in no event, be sooner than twenty (20) days from the date City mails the bill to Utility. In the event that Utility fails to make payment of any bill by the due date, City may, at its discretion and after providing written notice to the Utility, charge a one-time late fee

equal to 10% of the unpaid bill.

6. Utility shall pay City monthly service charges for all water provided under the terms of this Agreement in accordance with the following monthly rates:

Meter Charge (6 inch meter):	\$ 352
0-1,000,000 gallons:	\$ 2.53 /1,000 gallons
over 1,000,000 gallons:	\$ 1.49 /1,000 gallons
DHEC meter charge:	\$.30

7. City may increase the billing rates set forth in the immediately preceding paragraph by appropriate official action of the City. City agrees to provide Utility at least ninety (90) days written notice before implementing any new rates. City agrees that rates and charges to Utility shall be at least as favorable as rates and charges City applies to its most-favored bulk water customers who are purchasing water for resale. City may meet this obligation through a volume sensitive rate structure providing per-gallon rates that decrease as the customer's total usage increases, as long as City offers to Utility the same volume-sensitive rate structure as that most-favored customer.

8. City acknowledges that Utility has received and paid for water service from City and/or its predecessor, the Westminster Commission of Public Works, since January 2001, and that Utility has paid a \$2,500 deposit that is currently in City's possession. City shall return this deposit to Utility if, during any consecutive twelve (12) month period, there are 1) no returned checks; and 2) no disconnections for non-payments; and 3) no assessed late fees. In the event that City returns the current deposit, City may require Utility to pay another \$2,500 deposit if, during any consecutive twelve (12) month period 1) there are two or more returned checks; or 2)

City disconnects the Utility three or more times for non-payment; or 3) City assesses six (6) or more late fees. City shall return any future customer deposits pursuant to the provisions set forth herein.

Section 3

PSC Authorization

9. This Agreement is expressly contingent upon the written approval of this Agreement in its entirety by the South Carolina Public Service Commission ("PSC"). The Parties agree to cooperate (and, if necessary, actively participate) in securing the PSC approval for this Agreement in its entirety. City's participation in any PSC approval proceeding will not be deemed to subject City to the jurisdiction of the PSC.

Section 4

Exclusive Supply Commitment and Exclusive Water Service

Commitment

10. As long as City is able to meet the Utility's water needs pursuant to the terms of this Agreement, the Utility agrees not to utilize alternative water supply sources. However, the Utility may retain any existing wells and supply facilities as an emergency back-up to be used in the event City is unable to provide the necessary and/or sufficient water supply capacity to meet Utility's service demand requirements. The Utility will provide City reasonable access to its wells, supply facilities, and records, if any, in order to verify that Utility is not using water from other sources in violation of this exclusive supply commitment.

11. City acknowledges the Utility's continuing and exclusive right to provide water service to customers within the Utility Service Area and shall not provide water service to any other customer or entity that would conflict in any way with Utility's provision of water service to customers within the Utility Service Area. City agrees to immediately terminate its provision of any such conflicting service upon receipt of written notice of the conflict from Utility. The Parties acknowledge that their recognition of the Utility Service Area as set forth herein does not denote or place upon Utility any obligation to serve customers within the Utility Service Area, such obligation being generally governed by applicable statutes, rules, and regulations of the State of South Carolina, and rulings of the PSC, if any. The provisions of the paragraph shall survive any termination or expiration of this Agreement.

Section 5

Term

12. This Agreement shall have an initial term of ten (10) years commencing on the date of execution of this Agreement. At the end of this term, the Agreement shall continue on a year-to-year basis ("Extension Term"), unless renegotiated by the Parties. During any Extension Term, the Parties agree that any party wishing to cancel the Agreement must give written notice of its intention to cancel at least one (1) year prior to the natural expiration of the Extension Term. Said Agreement shall not be considered an obligation on the part of City or Utility to perform in any way other than as indicated in this Agreement.

Section 6

General Provisions

13. The Parties acknowledge that Utility may provide wholesale and/or retail water service to areas and customers outside Utility Service Area, subject to the expansion requirements set forth in paragraph 3, above. This acknowledgment is conditioned upon Utility's corresponding agreement not to provide such expanded service 1) directly to any other bulk-service customer to which City is directly providing service, or 2) in any geographic service area where City is providing service directly to retail end-users.

14. This Agreement contains all of the terms and provisions of the Agreement between the Parties from the date of its execution and all prior negotiations are merged into this written agreement. No amendment or alteration shall be binding unless both Parties have executed a written instrument amending this Agreement. Whenever one Party gives notice to the other Party concerning any of the provisions of this Agreement, such notice shall be given to all addresses below by certified mail, return receipt required. Said notice shall be deemed given when it is deposited in the United States mail with sufficient postage prepaid (notwithstanding that the return receipt is not subsequently received).

Notices shall be addressed as follows:

CITY OF WESTMINSTER

P.O. Box 399
Westminster, South Carolina 29693
Attn: City Administrator

TOTAL ENVIRONMENTAL
SOLUTIONS, INC
PO Box 14056
Baton Rouge LA 70898-4056
Attn: Mr. Paul E. Maeder

with copy to:

John F. Beach
Ellis Lawhorne & Sims, P.A.
P.O. Box 2285
Columbia, SC 29202

These Addresses may be changed by giving notice as provided for in this paragraph.

15. No waiver of breach of any of the terms of this Agreement shall be construed to be a waiver of any preceding and/or succeeding breach.

16. Utility hereby agrees to defend, indemnify, and hold harmless City from any and all liability and/or damages arising out of Utility's distribution and sale of water City has provided under this Agreement, as long as City has met all of its obligations under this Agreement.

17. City hereby agrees to defend, indemnify, and hold harmless Utility from any and all liability and/or damages arising out of or caused by City's distribution and sale of water to Utility under this Agreement, as long as Utility has met all of its obligations under this Agreement.

Section 7

Default

18. If either Party materially fails or defaults in keeping, performing, or abiding by the terms and provisions of this Agreement, then the non-defaulting Party shall give written

notice to defaulting Party specifying the nature of the default. If the defaulting Party does not cure the default within thirty (30) days after the date of written notice, then this Agreement, at the option of the non-defaulting Party, shall terminate. Neither Party shall be relieved of liability to the other for damages sustained by virtue of any Party wrongfully exercising this provision. This paragraph is not intended to replace any other legal or equitable remedies available to any non-defaulting Party under South Carolina law, but it is in addition thereto.

19. BREACH OF AGREEMENT: In addition to all other available remedies at law or in equity, the Parties agree that no adequate remedy at law exists with respect to the damages resulting from a breach of this Agreement. Accordingly, the Parties agree that, at the option of the aggrieved Party, specific performance of the Agreement will be a proper remedy upon a proper showing of a breach of this Agreement by either Party in a court of competent jurisdiction hearing any such dispute. In addition to the above-described remedy the aggrieved Party may seek monetary damages, attorney's fees, and costs.

Section 8

Force Majeure

20. If, by reason of force majeure, either Party hereto shall be rendered unable in whole or in part, to carry out its obligations under this Agreement, then, and in that event, said Party shall give notice in writing to the other Party within a reasonable time thereafter, giving the full particulars of such force majeure. The obligations of the Party so affected shall thereupon be suspended and such suspension shall continue during the period in which such inability continues; provided, however, that the disabled Party shall endeavor with all reasonable dispatch, to remove

or overcome such liability.

21. The term “force majeure” shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of the PSC and courts of this State, orders of any kind of the government of the United States or the State of South Carolina, or any military authority, insurrection, riots epidemics, landslides, earthquakes, fires, storms, hurricanes, floods, wash-outs, droughts, arrests and restraints of government and people, civil disturbances, or inability of Utility to receive water hereunder for any reason or cause not reasonably within the control of the Utility.

Section 9

Miscellaneous Provisions

22. In the event the Utility disputes the accuracy of any Master Meter reading, it must notify City in writing within ninety (90) days of billing and request City demonstrate through appropriate calibration testing that the Master Meter is functioning properly and accurately in accordance with manufacturer’s standards and specifications. All Master Meter readings not disputed within ninety (90) days of billing receipt by Utility are final and not subject to dispute. In the event Utility disputes the billing, it shall pay the disputed amount billed by City unless otherwise arranged with City. If it is subsequently determined that the billing is in error, then City will reimburse Utility for any difference between the actual billing and the otherwise correct billing within thirty (30) days of such determination. If City’s Master Meter is not working properly or accurately, City shall immediately repair, or, if necessary, replace the Master Meter at City’s sole cost. In the even of any unresolved dispute concerning the Master Meter’s

performance or accuracy, the Parties shall mutually select an independent testing company qualified to perform appropriate tests upon the Master Meter. The decision of this mutually selected testing company as to the Master Meter's performance or accuracy shall be binding upon the Parties. In the event the Master Meter is determined to be accurate within the range of tolerance, then Utility shall pay the cost of testing. If the Master Meter is determined to be inaccurate and outside the range of tolerances, then City shall pay the cost of testing.

23. The Parties shall, upon request of the other, execute and deliver such other documents and instruments and take other actions as may be reasonably required to carry out the intent of this Agreement.

24. Utility will submit this Agreement for PSC approval within twenty (20) days of execution by City.


25. This Agreement shall be binding upon the heirs, representatives and assigns of the Parties hereto unless otherwise specified herein, and the provisions hereof shall constitute covenants running with the land for the benefit of the heirs, representatives and assigns of the Party.

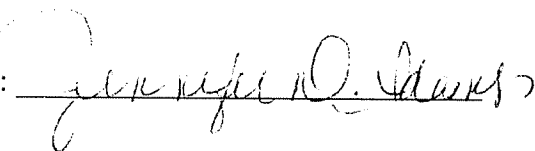
[Signature page to follow]

IN WITNESS WHEREOF, the Parties have here unto set their hands and seals the date first
above-written:

CITY OF WESTMINSTER,
SOUTH CAROLINA

Attest: 

By: 

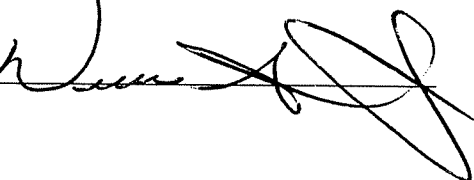
Attest: 

Its: CITY ADMINISTRATOR

TOTAL ENVIRONMENTAL SOLUTIONS
INC.

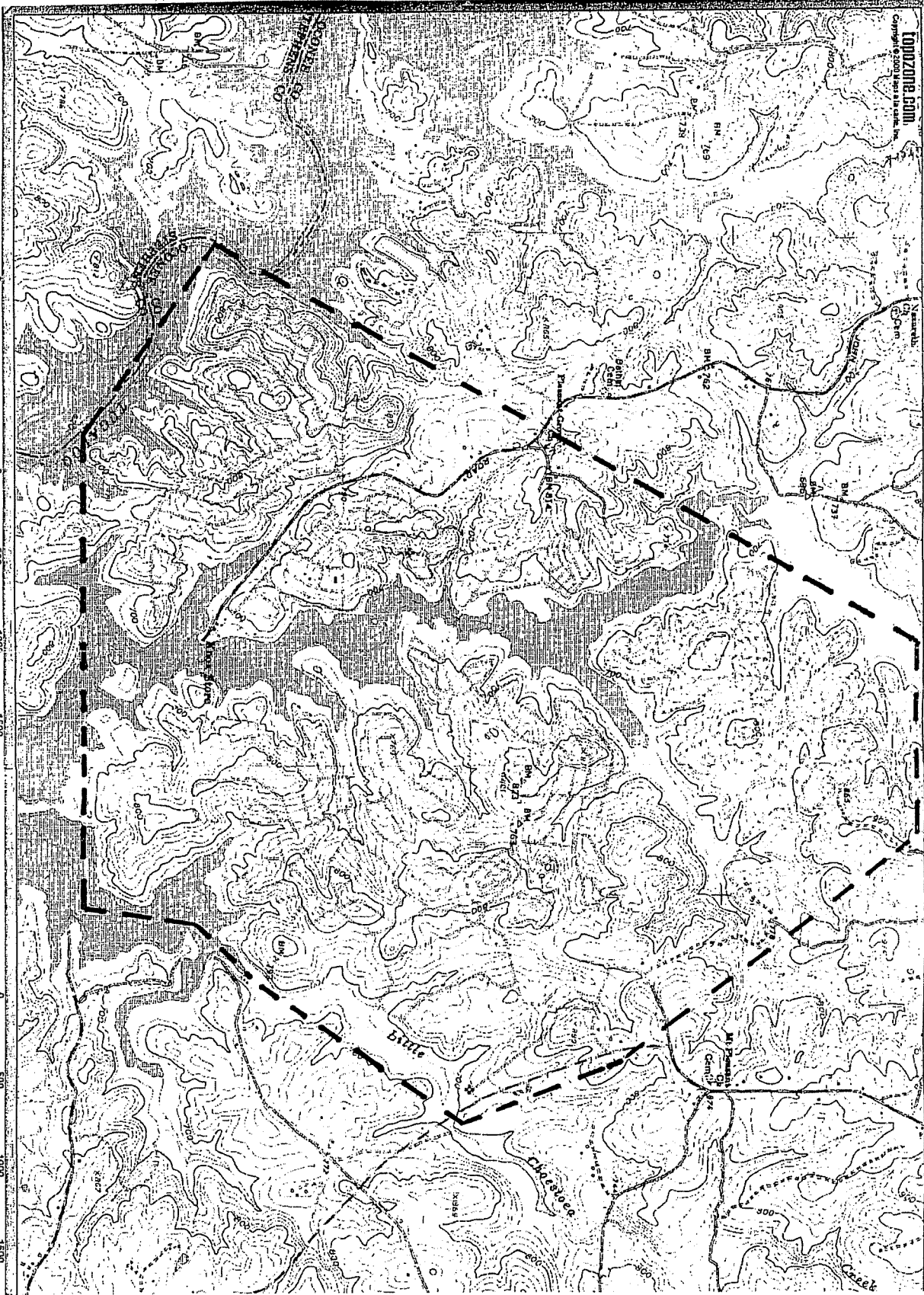
Attest: 

By: 

Attest: 

Its: CHIEF EXECUTIVE OFFICER

EXHIBIT 1



Utility Service Area ---

